



TEXAS  
WORKERS' COMPENSATION COMMISSION  
SOUTHFIELD BUILDING, 4000 SOUTH III-35, AUSTIN, TEXAS 78704  
(512) 448-7900

JD #16213  
MBJ

RD-401

May 21, 1992

RECEIVED

MAY 29 92

Opinion Committee

The Honorable Dan Morales  
Attorney General  
Price Daniel, Sr. Building  
209 West 14th Street  
Austin, Texas 78701

Dear General Morales:

I am writing to request an opinion regarding whether a political subdivision is required to provide workers' compensation coverage to its employees. Specifically, I would like an opinion as to:

1. Whether a political subdivision is required to provide workers' compensation coverage to its employees or may it elect to become a non-subscriber (an employer without workers' compensation coverage)?
2. If a political subdivision may elect to become a nonsubscriber, does a nonsubscribing political subdivision waive its common law defenses?
3. If a political subdivision elects to become a self-insurer, is it subject to any requirements similar to those applied to private employers in Art. 8308-3.51 to 3.70?

Article 8309h is the law governing workers' compensation insurance for employees of political subdivisions. §2(a) states:

All political subdivisions of this state shall become either self-insurers, provide insurance under workmen's compensation insurance contracts or policies, or enter into interlocal agreements with other political subdivisions providing for self-insurance, extending workmen's compensation benefits to their employees.

In 1974, Attorney General Opinion No. H-338 held that Article 8309h did not require political subdivisions to provide workers' compensation coverage for their employees through any of the methods set out in §2(a) because Art. 8309h, §3(a) adopted from the general workers' compensation laws the provisions which permitted employees of non-subscribers to sue their employer at common law

for injuries sustained on the job (Art. 8306, §4), required such employees to prove negligence on the part of the employer (Art. 8306, §1), and required a non-subscribing employer to forfeit the common law defenses in such an action (Art. 8306, §1).

After the 1989 reform of the workers' compensation system, §2(a) of Art. 8309h remained unchanged but the provisions of §3(a) adopting certain portions of the general workers' compensation law (now Vernon's Ann.Civ.St., Art. 8308-1.01 et seq) was amended. Among the provisions of the new law adopted in Art. 8309h, §3(a) are Chapter A of Article 3 except §§3.03, 3.04, 3.07, 3.08, 3.09, 3.10, and 3.11. The effect of this amendment is that the provisions of the new law relating to suits against non-subscribing employers, an employee's right to sue, and the forfeiture of common law defenses by a non-subscribing employer (all of which are contained in Art. 8308-3.03 and 3.04) no longer apply to political subdivisions. You should also be aware that Art. 8309h, §2(c) states:

[E]mployees of a political subdivision shall be conclusively deemed to have accepted the compensation provisions in lieu of common-law or statutory liability or cause of action, if any, for injuries received in the course of employment or death resulting from injuries so received.

This language was also a part of the law prior to the enactment of the new Texas Workers' Compensation Act. In light of the 1989 amendments to Art. 8309h and the specific language in §2(c), are political subdivisions now required to provide workers' compensation coverage to their employees under one of the three methods set out in §2(a)?

If you determine that political subdivisions may still elect to be non-subscribers, the issue of whether, in light of the 1989 amendments to Art. 8309h, a non-subscribing political subdivision forfeits its common law defenses in a suit brought by an injured employee must be resolved. H-338 also addressed this issue. The opinion held that a non-subscribing political subdivision subjected itself to common law liability without common law defenses, because Art. 8309h, §3(a) adopted Art. 8306, §1 which required non-subscribing employers to forfeit their common law defenses. As noted above, the provisions of the new workers' compensation law relating to the forfeiture of common law defenses (Art. 8308-3.03) are specifically excepted from the parts of Chapter A of Article 3 which are adopted by Art. 8309h. If political subdivisions are permitted to become non-subscribers, does a non-subscribing political subdivision forfeit its common law rights in a suit brought by an injured employee as a result of the 1989 amendments to Art. 8309h?

The Texas Workers' Compensation Act enacted in 1989 also contains provisions which permit private employers to self-insure. Those provisions are contained in Art. 8308-3.51 to 3.70 (Chapter D of Article 3). As noted above, only Chapter A of Article 3 was adopted by Art. 8309h, §3(a) to apply to political subdivisions. As a result, a political subdivision which chooses to self-insure is not subject to the requirements set out in the Texas Workers' Compensation Act for private employers. Is such a political

subdivision subject to any requirements when it elects to self-insure?

If you have any questions or need additional information, please contact Claudia Nadig, Assistant General Counsel, at the address above or at 440-3969.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd K. Brown", with a long horizontal flourish extending to the right.

Todd K. Brown  
Acting Executive Director

CN:wp\document\letters\opinions\polsub